code. Nevertheless, the comparison between the two statutes reveals plainly the fact that for many years we have been pursuing the policy of attempting to regulate by specific and minute statutory enactment all the details of the process which, under a multitude of varying conditions, suitors may get their rights.

"Such a policy never ends. The attempt to cover, by express specific enactment, every conceivable contingency inevitably leads to continual discovery of new contingencies and unanticipated results requiring continual amendment and supplement. Whatever we do to our code, so long as the present theory of legislation is followed the code will continue to grow and the vast mass of specific and technical provisions will continue to increase. I submit to the judgment of the profession that the method is wrong, the theory is wrong, and that the true remedy is to sweep from our statute books the whole mass of detailed provisions and substitute a simple practice act containing only the necessary fundamental rules of procedure, leaving all the rest to the rules of court. When that has been done the legislature should leave our procedure alone."

The principles which should be fundamental to a system of procedure adapted to our substantive law and methods of trial are fairly well known and have been developed by experience, but so chaotic has been our procedure in this country of recent years, due to legislative interference, that there may not at once be agreement as to them. Whether or not the present craze for detailed legislation can be overcome for some time in the future, the attempt to do so cannot too soon be begun. E. L.

AN IMPORTANT REFORM IN FEDERAL PROCEDURE.

In a previous issue of the JOURNAL attention was called to a bill prepared by a committee of the American Bar Association, and endorsed by that body, designed to diminish the abuse of reversals and otherwise improve the administration of justice in the federal courts. We are glad to be able to say that the more important parts of this bill were passed by Congress at the recent session and are now law. The law provides that:

"No judgment shall be set aside, or reversed, or new trial granted, by any court of the United States in any case, civil or criminal, on the ground of misdirection of the jury or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless, in the opinion of the court to which application is made, after an examination of the entire cause, it shall appear that the error com-

plained of has injuriously affected the substantial rights of the parties. The trial judge may in any case submit to the jury the issues of fact arising upon the pleadings, reserving any question of law arising in the case for subsequent argument and decision, and he and any court to which the case shall thereafter be taken on writ of error shall have the power to direct judgment to be entered either upon the verdict or upon the point reserved, if conclusive, as its judgment upon such point reserved may require."

This rule is now in force in a number of states, notably New York, Massachusetts, New Hampshire, Wisconsin, Kansas and Oklahoma, and there is a widespread demand for its adoption in other states. Now that it has been made a rule of procedure for the federal courts, it is to be hoped that the example set by the nation will be followed by all the states. There seems to be no good reason why it should not be a rule of procedure in every appellate court in the land. Some of the instances of reversals for errors cited by the judiciary committee of the House in its report recommending the passage of the bill seem almost incredible and would not be tolerated anywhere outside the United States.

As originally framed, the bill contained a provision forbidding the issue of writs of error in criminal cases, except where a justice of the Supreme Court should certify that there was probable cause for believing that the defendant was unjustly convicted. But this section was not passed. As it is, the judge has practically no discretion, but must allow an appeal as a matter of course. Thus a criminal who has been convicted in a state court, and whose conviction has been affirmed by the highest court of the state, may sue out a writ of error to the Supreme Court of the United States alleging that a federal question is involved and the court is bound to allow the writ, although it may be perfectly clear that the purpose is merely to delay the infliction of a deserved punishment. The rejected provision made it incumbent upon the appellant or plaintiff in error to satisfy a justice of the Supreme Court that he had been unjustly convicted, otherwise the writ would be refused. Still another rejected provision was designed to diminish the abuse of the writ of *habeas corpus* proceedings, except where a justice of the Supreme Court was willing to certify that in his opinion there was probable cause for believing that the petitioner was wrongfully deprived of his liberty. A third provision, also rejected, allowed appeals and writs of error to be taken from the district courts to the circuit courts of appeal in cases of conviction for infamous crime. Under the present procedure writs of error in capital cases may be taken to the Supreme

Court, making it necesasry for this court, already over-burdened, to review nearly every capital case where there has been a conviction in a district court. Had this provision been enacted, the decision of the circuit court of appeals in capital cases would have been final, as it now is in other criminal cases, and thus an important cause of delay in the administration of justice would have been removed and the Supreme Court relieved of the burden of reviewing criminal cases. Nevertheless, the most important provision of the bill was enacted into law and the advocates of reform everywhere should be thankful that the nation has made the rule of harmless error a part of its judicial procedure and thus set an example which it is to be hoped the states will quickly follow. J. W. G.

COMMON SENSE IN THE FRAMING OF INDICTMENTS.

In the last issue of the JOURNAL we called attention to the need of greater simplification in the preparation of indictments, and for purposes of comparison we printed the text of a typical American indictment and along with it the same indictment as it would be drawn in England. An official of the attorney general's office of Canada calls our attention to the fact that the form employed in the Dominion is even more simple than that of England. The indictment in question, he says, would in Canada read as follows:

> The jurors of our Lord the King present that J. F. G., on the sixth day of August, one thousand nine hundred and eight, at the city of Winnipeg, in the Province of Manitoba, murdered F. M.

The Canadians, it will be seen, have gone further than the English and have abandoned the use of the words "feloniously, wilfully, and of his malice aforethought," for the obvious reason that the elements of the crime of murder are sufficiently alleged in the word "murdered," and, hence, any further allegations are regarded as superfluous.

Commenting on the exhibit published in our last number, the New York Tribune asks: "What wonder that justice is slow in America, when all the trumpery of the Middle Ages is preserved in its practice?" In the same spirit the *Rochester Herald* dwells upon the crying need for greater simplicity and more common sense in the formulation of charges. "The phraseology now required in setting forth an offense," it says, "is so involved that it is seemingly next to impossible to draw an indictment in which the reviewing courts, which employ a microscope in their inspection, cannot find a flaw which serves to undo a great deal of painstaking effort on the part of the trial officers, sending it back to be done over again, to the probable advantage of a criminal whose deserts do not call for so much consideration." Be it said